

March 1, 1999

**INSTRUCTIONS
FOR EMERGENCY ASSISTANCE
UNDER PUBLIC LAW 84-99**

ADVANCED MEASURES

A. Project Cooperation Agreement:

1. Attach copies of board minutes or council resolutions signed by at least one member of the board who is not the Mayor or Chairman (Enclosure 1) authorizing execution of the Project Cooperation Agreement.

2. Execute the Project Cooperation Agreement (Enclosure 2). The Sponsor must have statutory authority to execute contracts with the United States. Generally levee districts, drainage districts, cities and counties have such authority.

a. Complete Sponsor information on pages 1, 4, and 5. (Typed information is preferred, but hand-written is acceptable.)

b. Sponsor signs where indicated.

c. The Corps will provide all Exhibits.

3. Advise the Sponsor that they are **RESPONSIBLE FOR REMOVAL OF TEMPORARY LEVEES, at no cost to the Corps**. The Sponsor can seek financial assistance for such levee removal work from other sources.

4. Express mail (ATTN: CEMVP-RE), FAX (651/290-5255), or hand-carry the signed Agreement to the Corps.

5. Notify the Real Estate Division (651/290-5391) by telephone that the Agreement has been executed and is in the mail or being FAXED.

6. A fully executed copy of the Agreement will be forwarded to the Sponsor by the Corps.

B. Lands, Easement and Rights-of-way:

Under the terms of the Agreement, the Sponsor must provide, without cost to the Government, all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Corps to be necessary for construction, operation, and maintenance of the project.

C. Lands, Easements, and Rights-of-Way Assistance

1. Acquisition of Lands, Easements, and Rights-of-Way

a. In the interest of time, the Sponsor will likely acquire Right of Entry for Construction (Enclosure 3) from record title owners and persons in apparent possession of lands upon which flood control work will be conducted or for ingress and egress to work sites.

b. The Sponsor may need to acquire levee easements, temporary construction easements, and borrow sites and spoil areas not already owned. If the Sponsor intends to turn temporary flood control structures into permanent structures, easements rather than rights of entry will be necessary. This process includes:

- (1) Ownership identification and verification;
- (2) Preparation of legal descriptions; and
- (3) A determination of fair market value.

2. Proceed as follows:

a. Any easements acquired will be between the Sponsor and the landowner. All owners with an interest in the property must sign, including spouses not named in original conveyances.

b. The acquisition of any interest in real property must comply with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, P.L. 91-646, as amended, and the Department of Transportation Regulations found in the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted programs, 49 CFR Part 24. Among other things, P.L. 91-646 requires that the Sponsor

- (1) Must offer at least the full appraised value;
- (2) Pay all reasonable closing costs; and
- (3) Provide relocation assistance.

c. If right-of-way is donated, the Sponsor must obtain a waiver of just compensation from the landowner. Many landowners will donate right-of-way as consideration for the benefit to their property .

d. Permanent easements must be recorded in the county records and comply with local requirements.

e. Signatures of individuals must be notarized.

f. Corporate signatures, including farm corporations and partnerships, require a Resolution.

NOTE: Acquisition forms available upon request from the Real Estate Division POC.

REAL ESTATE
POINTS OF CONTACT:

LUANN HOFF
REALTY SPECIALIST
REAL ESTATE DIVISION
(651) 290-5593

KURT REPPE
REALTY SPECIALIST
REAL ESTATE DIVISION
(651) 290-5397

MARK W. NELSON
CHIEF, REAL ESTATE DIVISION
(651) 290-5390

ADDRESS: ATTN: CEMVP-RE
 190 FIFTH STREET, EAST
 ST. PAUL, MN 55101-1638
FAX: (651) 290-5255

**RESOLUTION OF THE
(BOARD OF COUNTY COMMISSIONERS)
(CITY or VILLAGE COUNCIL) OF**

(SPONSOR)

WHEREAS, Public Law 99, 88th Congress, as amended, (33 U.S. Code, Section 701n) provides a means of preparing for and combating damage by floods and flood waters; and

WHEREAS, (name of Governmental body) has exhausted all resources available to it for flood emergency preparation and flood fighting and rescue operations; and

WHEREAS, on the date of this Resolution emergency flood preparation is needed and assistance required for this purpose as well as for flood fighting and rescue operations; and

NOW, THEREFORE, BE IT RESOLVED that the U.S. Army Corps of Engineers be, and is hereby, requested to furnish assistance in flood emergency preparation and in flood fighting and rescue operations.

BE IT FURTHER RESOLVED that in consideration of such assistance the above-named Governmental body agrees to:

- a. Provide to the United States all lands, easements and rights-of-way for the emergency work, including, but not limited to, levee, borrow, spoil and access rights-of-way.
- b. Hold and Save the United States free from all claims for damages attributable to the construction works except for damages due to the fault or negligence of the United States or its Contractors.
- c. Operate and maintain the emergency construction works for the duration of the flood emergency.
- d. Provide common labor.
- e. Provide as required under the applicable provisions of Public Law 91-646 relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency flood construction work.
- f. Remove after the flood emergency without cost to the U.S. Army Corps of Engineers any temporary emergency works constructed for the flood emergency.

BE IT FURTHER RESOLVED that the (Chairman of the County Board of _____) or (Mayor of the City of _____) be authorized to enter into agreements with the Corps of Engineers as to the means of supplementing the local flood emergency preparation and flood fighting and rescue operations.

Dated: _____ Member
_____ Member

**AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
and**

(City, County, etc.)

**for
FLOOD EMERGENCY PREPARATION**

THIS AGREEMENT, by and between THE UNITED STATES OF AMERICA (hereinafter called the "Government") represented by Commander, U.S. Army Corps of Engineers, St. Paul District (hereinafter the "District Engineer"), and _____, (hereinafter called the "Sponsor") is entered into for the provision of emergency flood preparation assistance to the Sponsor under the terms and conditions set forth herein.

WITNESSETH THAT:

WHEREAS, Public Law 99, 84th Congress, as amended, authorizes the Chief of Engineers to undertake flood fighting and flood emergency preparation (advance measures); and,

WHEREAS, the Governor for the State has requested, in writing, flood emergency preparation assistance under Public Law 84-99, and the Sponsor qualifies for assistance in accordance with the established policies of the U.S. Army Corps of Engineers.

WHEREAS, the Sponsor and Government agree that in the event an emergency is declared, this agreement will provide the necessary authorization for all activities to be redirected into the emergency assistance program.

NOW, THEREFORE, the parties agree as follows:

1. The Government will, subject to the availability of funds appropriated by Congress and allocated for this purpose, endeavor to perform an agreed upon emergency levee protection plan for the Sponsor during emergency operations (Work) or the work described in the attached Scope of Work. All Work will be performed as expeditiously as possible.
2. If the Government provides sandbags to the Sponsor for use in flood fighting activities, the Sponsor will use these sandbags in accordance with Government standards and guidelines. The Sponsor may want to consider building backup levees where sandbag structures are used in the construction of closures, main levees, or other flood protection structures.
3. The Sponsor agrees, in consideration of the Government providing assistance hereunder, to fulfill the requirements of non-Federal cooperation required by law and the policies and regulations of the U.S. Army Corps of Engineers, to wit:

a. Provide, without cost to the Government, all lands, easements and rights-of-way necessary for performance of the Work; together with, primary and secondary borrow sites and/or disposal sites and access to and from the site(s) of the Work, the borrow sites, and spoil areas. The Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, and performing relocations for construction, operation, and maintenance of the Work, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

b. Hold and save the Government free from all damages arising from the performance of the Work, including the construction, operation or maintenance of the Work, including its upgrading or removal, except for damages due to the fault or negligence of the Government or its contractors.

c. (i) Remove all temporary works constructed by the Government. Removals must be initiated within 30 days of the conclusion of the flood event and completed as expeditiously as possible; or,

(ii) Upgrade, maintain and operate the completed work in a manner satisfactory to the Government.

4. The Sponsor further agrees to the following:

a. In the exercise of the Sponsor's rights and obligations hereunder, the Sponsor agrees to comply with all applicable Federal and state laws and regulations.

b. All Work completed will be restricted from the designated floodway which both parties of this agreement will determine on the ground prior to the construction of any flood protection works.

c. The Sponsor will be held accountable for possession, maintenance and return of all Government equipment provided for use in flood fighting activities. Government equipment damaged, destroyed or lost while in the Sponsor=s possession will be repaired or restored by the Sponsor at the Sponsor=s expense.

d. The Sponsor has established a flood response organization and designated an Incident Commander. The Sponsor=s Incident Commander is identified on page 5 of this agreement.

5. The Government and the Sponsor act in an independent capacity in the performance of their respective functions under this Agreement and neither party is to be considered the officer, agent nor employee of the other.

6. The Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

7. a. The term of this Agreement shall conclude upon the completion of the Work by the Government and the removal or upgrading of any temporary structures or works by the Sponsor. The conclusion of this Agreement shall in no way terminate or alter the Sponsor's ongoing obligations to indemnify the Government as provided in Paragraph 3.b. above.

b. If at any time the Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend performance of the Work unless the District Engineer determines that continuation of work is in the interest of the Government or is necessary in order to satisfy agreements with any other non-Federal interests. However, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that future performance under this Agreement is deferred pursuant to this Article, such deferral shall remain in effect until such time as either the Government elects to proceed with further construction or terminates this Agreement.

8. a. After execution of this Agreement and upon direction by the District Engineer, the Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections 9601-9675, on lands necessary to the performance of the Work or its removal or upgrading. All costs incurred in performance of any such investigations for hazardous substances shall be borne by the Sponsor.

b. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the performance of the Work contain any hazardous substances regulated under CERCLA, the Sponsor and the Government shall provide prompt notice to each other, and the Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

c. The Government and Sponsor shall determine whether to initiate the Work, or, if the Work is already underway, to continue with the Work, or to terminate performance of the Work for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Work. Should the Government and the Sponsor determine to proceed or continue with the Work after considering any liability that may arise under CERCLA, the Sponsor shall be responsible, as between the Government and the Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies

and investigations necessary to determine an appropriate response to the contamination. Such costs shall be borne solely by the Sponsor. In the event the Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend the Work or proceed with further work as provided in Paragraph 6. of this Agreement.

d. The Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to Subpart c. of this Paragraph shall not relieve any party from any liability that may arise under CERCLA.

e. As between the Government and the Sponsor, the Sponsor shall be considered the operator of the Work for purposes of CERCLA liability. To the maximum extent practicable, the Sponsor shall operate and maintain the Work in a manner that will not cause liability to arise under CERCLA.

9. PERMISSION is hereby granted to the Government, its officers, employees, agents and assigns, and the Government contractors, their officers, employees, agents and assigns, to enter upon Sponsor=s lands and rights-of-way to be obtained by said Sponsor, for the purpose of performing the emergency flood control Work hereinabove described.

10. a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered or certified mail, as follows:

If to the Sponsor : (*Mailing Address*)

If to Government:

District Engineer
U.S. Army Corps of Engineers
St. Paul District
190 Fifth Street East
St. Paul, MN 55101-1638

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

11. SCOPE OF WORK: The Work completed under this agreement will be coordinated and agreed upon by both the Sponsor and the Government prior to construction.

12. ATTACHMENTS:

- a.
- b.
- c.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by both parties.

**THE UNITED STATES OF AMERICA
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
ST. PAUL DISTRICT**

SPONSOR NAME:

(City, County, etc.)

By: _____

By: _____

Title: _____

Printed Name: _____

Kenneth S. Kasprisin
Colonel, Corps of Engineers
District Engineer

Title: _____

Phone No. _____

Dated: _____

Dated: _____

Sponsor=s Incident Commander:

(Name)

Phone No. _____

RIGHT OF ENTRY FOR CONSTRUCTION

PROJECT _____ **Emergency Flood** **PARCEL NO.** _____

The undersigned hereinafter called the "Grantor" hereby grants to _____ hereinafter called the "Grantee" a permit or right-of-entry upon the following terms and conditions:

1. The Grantor hereby grants to the Grantee an irrevocable right to enter upon the lands hereinafter described any time within a period of _____ from the date of this instrument, in order to perform construction work of any nature.
2. All tools, equipment, buildings, improvements, and other property taken upon or placed upon the land by the Grantee shall remain the property of the Grantee and may be removed by the Grantee at any time within a reasonable period after the expiration of this permit or right-of-entry.
3. It is understood and agreed that if the Grantee is responsible for any damage arising from the activity of the Grantee, its employees and/or contractors on said lands, in the exercise of the rights under this permit or right-of-entry, Grantee shall repair such damages, or, in lieu thereof and at the option of the Grantee, shall make an appropriate settlement with the Grantor.

The land affected by this permit or right-of-entry is located in the County of _____, State of _____, and is described as follows:

WITNESS MY HAND AND SEAL this _____ day of _____, 19 _____.

Sponsor

By _____

Title _____

Grantor -

Grantor -

Comments:

Phone No. _____